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November 23, 2010

The Honorable Max Baucus
Chairman
The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate

The Honorable Henry A. Waxman
Chairman
The Honorable Joe L. Barton
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Sander M. Levin
Acting Chairman
The Honorable Dave Camp
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of Health and Human Services, Centers for Medicare & Medicaid Services: Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2011*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), entitled “Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2011” (RIN: 0938-AP81). We received the rule on November 5, 2010. It was published in the *Federal Register* as a notice on November 9, 2010. 75 Fed. Reg. 68,790.

The notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance (SMI) program beginning January 1, 2011. In addition, this notice announces the monthly premium for aged and disabled

beneficiaries as well as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. The monthly actuarial rates for 2011 are \$230.70 for aged enrollees and \$266.30 for disabled enrollees. The standard monthly Part B premium rate for 2011 is \$115.40, which is equal to 50 percent of the monthly actuarial rate for aged enrollees or approximately 25 percent of the expected average total cost of Part B coverage for aged enrollees. (The 2010 standard premium rate was \$110.50.) The Part B deductible for 2011 is \$162.00 for all Part B beneficiaries. If a beneficiary has to pay an income-related monthly adjustment, they may have to pay a total monthly premium of about 35, 50, 65, or 80 percent of the total cost of Part B coverage.

The rule has an effective date of January 1, 2011. The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. §§ 553(d)(3), 808(2). Accordingly, CMS believes it has good cause to forego the notice and comment procedures because the statute establishes the time period for which the premium rates will apply and the formulas used to calculate the Part B premiums are statutorily directed.

Enclosed is our assessment of CMS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that CMS complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Ann Stallion
Program Manager, Department of
Health and Human Services

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR MEDICARE & MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; MEDICARE PART B MONTHLY
ACTUARIAL RATES, PREMIUM RATE, AND
ANNUAL DEDUCTIBLE BEGINNING JANUARY 1, 2011"
(RIN: 0938-AP81)

(i) Cost-benefit analysis

CMS estimates the standard Part B premium rate of \$115.40 is \$4.90 higher than the premium for 2010, so there will be about \$700 million of additional costs in 2011 to the approximately 12 million Part B enrollees who pay the increase in the Part B premium.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

CMS has determined that the notice will not have significant economic impact on a substantial number of small entities or on the operations of a substantial number of rural hospitals.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

CMS has determined that the notice will not impose spending costs on state, local or tribal governments in the aggregate, or by the private sector in any one year of \$135 million or more.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

In accordance with CMS's past practices regarding publication of deductible and coinsurance amounts under Medicare where such amounts are determined according to statute, a general notice is used rather than notice and comment rulemaking procedures contained in section 553 of the Administrative Procedure Act.

In addition, CMS noted good cause to waive the publication of a proposed notice and solicitation of public comments because delaying publication of rates would be contrary to the public interest.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

In its submission to the Comptroller General, CMS did not address the Paperwork Reduction Act. However, in past annual notices announcing these rates, CMS has stated that the notice does not contain any information collection requirements subject to the Act.

Statutory authorization for the rule

CMS states that the notice is issued pursuant to the authority contained in section 1839 of the Social Security Act (42 U.S.C. § 1395Rr).

Executive Order No. 12,866 (Regulatory Planning and Review)

CMS has determined that the notice is economically significant and, in accordance with the Order, the notice was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CMS has determined that this notice does not significantly affect the rights, roles, and responsibilities of states and, therefore, does not have federalism implications.